



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

FEB 25 2005

Christopher A. Myers, Esq.  
Holland & Knight LLP  
1600 Tysons Boulevard  
McLean, VA 22102-4867

RE: MUR 5645  
Highmark, Inc.  
David O'Brien

Dear Mr. Myers:

On January 27, 2005, the Federal Election Commission found that there is reason to believe Highmark, Inc. violated 2 U.S.C. §§ 441b(a) and 441c(a)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Also on that date, the Commission found reason to believe that David O'Brien violated 2 U.S.C. § 441b(a). These findings were based upon information contained in your submission dated June 15, 2004 and ascertained in the normal course of carrying out the Commission's supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analyses, which more fully explain the Commission's findings, are attached for your information.

Please submit your answers, along with any additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter, to the General Counsel's Office within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Vice Chairman

Enclosures  
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENT: Highmark, Inc.

MUR: 5645

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9 **I. INTRODUCTION**

10 Through its counsel, Highmark, Inc. ("Highmark"), an insurance company based in  
11 Pittsburgh, Pennsylvania,<sup>1</sup> made a voluntary submission notifying the Commission that  
12 Highmark appeared to have violated the Federal Election Campaign Act of 1971, as amended  
13 (the "Act") by using corporate funds to defray \$52,303.59 in costs of fundraising events for  
14 Senator Rick Santorum's authorized committees and his leadership PAC. The information  
15 provided, including extensive documentation, indicates that this activity primarily involved one  
16 Highmark officer, Bruce Hironimus, former Vice President for Government Affairs. Mr.  
17 Hironimus used expense reports and check requests to authorize the use of corporate funds to pay  
18 the costs of the fundraising events. Some of these payments were approved by the supervisors of  
19 Mr. Hironimus, Executive Vice Presidents George Grode and David O'Brien. The activity  
20 described in Highmark's submission occurred during the period 1999-2003.

21 As more fully set forth below, it appears that Highmark and other persons engaged in  
22 activities that constitute prohibited corporate and federal contractor contributions in violation of  
23 2 U.S.C. §§ 441b(a) and 441c(a)(1). Highmark's submission also generates questions regarding

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<sup>1</sup> Highmark is a non-profit corporation whose primary business is the provision of a variety of health insurance products throughout Pennsylvania. Highmark was created in 1996 by the consolidation of two Pennsylvania licensees of the Blue Cross and Blue Shield Association, Medical Service Association of Pennsylvania d/b/a Pennsylvania Blue Shield, and Veritus Inc d/b/a Blue Cross of Western Pennsylvania. Highmark has a number of subsidiaries that sell a variety of insurance products nationally without using the Blue Cross Blue Shield brands. Highmark's website describes the company as one of the largest health insurers in the United States. See <https://www.highmark.com/hmk2/about/index.shtml>

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1 the raising of contributions in connection with the Santorum events with the possibility of  
2 additional section 441b(a) violations in the form of corporate facilitation. See 11 C.F.R.  
3 §§ 110.6(b)(2)(ii) and 114.2(f).

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 **A. Summary of Sua Sponte Submission**

6 Highmark's submission describes how the payments came to light in the course of a  
7 routine internal audit, the investigation that the corporation conducted and the hiring of counsel  
8 who then conducted a further investigation. The submission consists of counsel's 22-page  
9 memorandum addressed to the Commission, 90 pages of documents related to the payments, and  
10 memoranda of counsel's interviews of 13 Highmark employees including Bruce Hironimus and  
11 the company's top executives.

12 **1. Highmark funds used to defray Santorum fundraiser costs**

13 The submitted materials focus on Bruce Hironimus's use of corporate funds to defray the  
14 costs of four fundraising events supporting Senator Rick Santorum:

Committee	Event	Date	Highmark funds spent <sup>2</sup>	Purpose
Santorum 2000	Golf tournament	5/14/99	\$15,148.79	Greens fees, carts, meals, beverages, prizes, handouts
Santorum 2000	Golf tournament	8/24/00	\$14,998.34	Greens fees, carts, meals, beverages, prizes, handouts
America's Foundation f/k/a Fight-PAC <sup>3</sup>	Golf tournament	5/17/02	\$14,217.65	Greens fees, carts, meals, beverages, prizes, handouts

<sup>2</sup> Each of these figures is the sum of multiple corporate payments detailed in Highmark's submission.

<sup>3</sup> This committee filed a Statement of Organization on September 1, 1995 under the name Fight-PAC, and an amended Statement of Organization on February 15, 2001, changing its name to America's Foundation. Public information sources identify America's Foundation as a leadership PAC of Senator Rick Santorum. See *The Almanac of Federal PACs. 2004-05*, page 622. A copy of an invitation to the America's Foundation fundraising event, from Bruce Hironimus dated March 28, 2002, describes the event as "an afternoon on the golf course in

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Santorum 2006	Reception at the home of Stan and Gretchin Rapp	6/30/03	\$7,938.81	Catering, wine
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2           **a.       The 1999, 2000 and 2002 golf tournaments**

3           Mr. Hironimus chaired the 1999, 2000 and 2002 golf tournament fundraisers at the  
4 Country Club of Hershey in Pennsylvania, where he was a member. As chair, Mr. Hironimus  
5 established the tournament “Host Committees”<sup>4</sup> and ran the tournaments. The submission  
6 indicates that 50 to 60 people typically contributed \$1,000 each to a Santorum committee to play  
7 golf at these events, which were attended by the candidate. See Memorandum of Interview of  
8 Bruce Hironimus (“Hironimus Interview”), November 18, 2003, ¶ 10.

9           The Highmark payments related to the three fundraising golf tournaments covered the  
10 costs of greens fees, carts, meals, beverages and so forth at the Country Club of Hershey. The  
11 payments also related to prizes and handouts such as golf clothing and equipment that were given  
12 to contributors who played in the tournaments.<sup>5</sup> Bruce Hironimus arranged these payments in

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support of U.S. Senator Rick Santorum, America’s Foundation Political Action Committee.” Highmark submission document page HM 0065. The same individual, Barbara W Bonfiglio, serves as treasurer of both America’s Foundation and Santorum 2006.

<sup>4</sup> The term “Host Committee” is not explained, but it appears to refer to individuals who solicit a number of other individuals to contribute to and attend the event. Cf. Highmark submission document page HM 0085 (solicitation for the June 30, 2003 fundraising event with level of participation stating “\$10,000 raised per Host”).

<sup>5</sup> Highmark’s submission states that Mr. Hironimus would periodically purchase significant amounts of golf-related merchandise and clothing. See Highmark Memorandum to the Commission (“Highmark Memorandum”), dated June 14, 2004, at 12. Sometimes these items were purchased for specific purposes, such as prizes for political or charitable fundraising events. *Id.* In other instances, the items purchased were intended for several purposes. *Id.* These included the Santorum golf tournaments, charity golf fundraisers sponsored by Highmark, and for use as giveaways when people would visit Mr. Hironimus’s office or play golf with him. *Id.* The submission states that whenever possible, based on Mr. Hironimus’s recollection, invoices are attributed to the specific purpose for which they were used. *Id.* When Mr. Hironimus was not able to attribute an invoice to a specific event, he estimated the percentage of the cost that went to each purpose. *Id.* His estimates regarding the allocations made from each purchase are included in the submission in the Hironimus Interview, December 28, 2003 and January 22, 2004, ¶¶ 15-16.

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1 two ways. First, he used check requests to cause Highmark checks to be issued to various  
2 vendors including the Country Club of Hershey. Mr. Hironimus himself had the authority to  
3 approve such check requests. The check requests describe the reason for the checks as  
4 “Promotional Items,” “Promotional Expenses” or “Private Business.”<sup>6</sup> See, e.g., Highmark  
5 submission document pages (“Highmark pages”) HM 0022B and 0059.<sup>7</sup> The portions of the  
6 check requests relating to the 1999, 2000 and 2002 Santorum golf tournaments total \$27,699.53.  
7 Second, Mr. Hironimus used expense reports to obtain reimbursement from Highmark of  
8 expenses directly incurred by him such as charges made to his membership account at the  
9 Country Club of Hershey. See, e.g., Highmark pages HM 0040-42. These expense reports were  
10 approved by Mr. Hironimus’s supervisor at the time, George Grode, then-Executive Vice  
11 President for Government Business and Corporate Affairs. See, e.g., Highmark page HM 0030.  
12 Expense reports describe expenses relating to a “Legislative Fundraiser,” a “Political  
13 Fundraiser,” and a “Sen. Santorum Event.” See Highmark pages HM 0041, 0063 and 0079.<sup>8</sup>  
14 Other expense reports describe expenses relating to “Promotional Expenses” or “Promotional

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<sup>6</sup> The term “Promotional” indicates that the costs should be charged against Mr. Hironimus’s budget’s “Promotions” line item; “Private Business” indicates that the expense is not to be charged against Highmark’s government programs. See Hironimus Interview, November 18, 2003, ¶ 24.

<sup>7</sup> One check request contains a statement relating to a fundraising event: “Highmark sponsored event 5/19/00.” Highmark document page HM 0061. This check request, however, is actually related to the August 24, 2000 Santorum golf tournament. See Highmark submission list of payments relating to the August 24, 2000 tournament, between Highmark pages HM 0048 and 0049.

<sup>8</sup> The various descriptions appear in two places on the expense reports, most of which consist of two pages: on the first page in the “Business Purpose” field or on the second page in either the “Business Purpose” field or the “Name, Title, Company of Attendees” field.

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1 Items.” See, e.g., Highmark pages HM 0031 and 0057. The portions of the expense reports  
2 relating to the 1999, 2000 and 2002 Santorum golf tournaments total \$16,665.25.<sup>9</sup>

3 **b. The 2003 Rapp reception**

4 The fundraising event supporting Senator Rick Santorum during 2003 was a reception  
5 held at the home of Stan and Gretchin Rapp in Hummelstown, Pennsylvania. Highmark funds  
6 were used to pay for the catering and for wine. As he did with the Santorum golf tournaments  
7 described above, Bruce Hironimus used a check request and an expense report to obtain  
8 reimbursement from Highmark for the Rapp reception costs. See Highmark pages HM 0089-91  
9 and 0086-87. The check request, which covered \$7,568.40 in catering costs, describes its  
10 purpose as “Promotional Expense” and “Private Business.” See Highmark page HM 0089. The  
11 expense report, which covered \$370.41 in wine costs, describes its purpose as “legislative mtgs”  
12 and “beverage for dinner events” was approved by Mr. Hironimus’s supervisor at the time, David  
13 O’Brien, Executive Vice President for Government Services. See Highmark pages HM 0086-87.  
14 Mr. O’Brien stated in a contemporaneous handwritten note that bottles of wine were “donated to  
15 Rick Santorum (Senator) for a fund raiser in Harrisburg on 6-30.” See Highmark page HM  
16 0088.<sup>10</sup>

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<sup>9</sup> The submission contains several e-mail messages dating from May-June 1999 regarding the amount of documentation that Bruce Hironimus needed to provide for the expenses listed on his expense reports. See Highmark pages HM 0044-48. The e-mail addresses indicate Highmark employees in “Finance” and other areas and Mr. Hironimus himself were involved in these communications. A message from Debra K. Lehman in Finance states that “[w]e will not be requiring detail information [sic] on the promotional items.” Highmark page HM 0047. Ms. Lehman explains that because Mr. Hironimus’s “cost center does not get charged to any government programs .. we do not need to document in as much detail.” *Id.* Her message also states that Mr. Hironimus “has a unique responsibility with Highmark. It requires unusual purchases at times.” *Id.*

<sup>10</sup> Mr. O’Brien’s note also explains that a portion of the wine purchased by Mr. Hironimus was used for a different event. *Id.* Mr. Hironimus’s expense report included the cost of the entire purchase, \$449.79. See Highmark page HM 0086

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1 Highmark's submission appears to contain thorough documentation of Bruce  
2 Hironimus's use of check requests and expense reports related to the use of Highmark funds to  
3 cover the costs of the four Santorum fundraising events. The documents submitted, including  
4 expense reports, check requests, receipts and invoices, support the dollar figures presented in  
5 Highmark's submission.<sup>11</sup>

6 **2. Raising contributions for the Santorum events**

7 Highmark's submission also contains documentation regarding the raising of  
8 contributions for the four fundraising events:

- 9
- 10 • 1999 golf tournament: A one-page memorandum from Bruce Hironimus to the  
11 Executive Committee of Highmark PAC, dated May 6, 1999 requesting that  
12 Highmark PAC contribute to several candidates, including \$2,000 to Santorum 2000  
13 in connection with a "Golf Outing."<sup>12</sup> See Highmark page HM 0022A.
  - 14 • 2000 golf tournament: An invitation titled "Please join U.S. Senator Rick Santorum"  
15 with the date,<sup>13</sup> time and location of the golf tournament and the price of \$1,000 per  
16 person. See Highmark page HM 0049. The invitation also contains a "Host  
Committee" list of fourteen individuals including Bruce Hironimus; George Grode;

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<sup>11</sup> The submission states that an examination of all available expense reports submitted by Bruce Hironimus, and check requests approved by Mr. Hironimus, from 1997-2003 failed to disclose any other claims for reimbursement for expenses associated with the defrayal of costs for fundraising events for federal candidates. See Highmark Memorandum at 5.

<sup>12</sup> Highmark PAC is Highmark's separate segregated fund whose full name is Highmark Health PAC of Highmark Blue Cross Blue Shield. Highmark PAC contributed \$2,000 to Santorum 2000 on May 12, 1999. Highmark's submission does not indicate any corporate contributions directly related to Highmark PAC.

<sup>13</sup> The stated date of the event is May 19, 2000, the same incorrect date as that noted on another document addressed in footnote 7 above. Highmark's submission identifies the event as taking place on August 24, 2000, consistent with other documentation such as the copy of a photograph accompanying the invitation, as noted below See Highmark page HM 0050.

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1 John S. Brouse, then-President and CEO of Highmark; and Stanley Rapp, host of the  
2 2003 reception for Senator Santorum. This invitation may not be a complete  
3 document, however, because it contains no contact information. Included with the  
4 invitation is a copy of a photograph of five men posing with golf clubs with the title  
5 "Santorum 2000 – Country Club of Hershey August 24, 2000." See Highmark page  
6 HM 0050.

- 7 • 2002 golf tournament: Letter titled "Golf Outing" from Bruce Hironimus as "Event  
8 Chair," dated March 28, 2002, soliciting contributions in connection with the  
9 tournament. See Highmark page HM 0065. The letter describes the event as "an  
10 afternoon on the golf course in support of U.S. Senator Rick Santorum, America's  
11 Foundation Political Action Committee" and as "a fundraiser for Rick's critically  
12 important political interests." The solicitation asks for a "minimum of \$1,000 per  
13 golfer" and asks contributors to "send [their] checks and direct any questions for  
14 further information to Megan Martin, Post Office Box 545, Harrisburg 17108,  
15 telephone 717.236.0443."<sup>14</sup> Finally, Mr. Hironimus's letter contains an untitled list of  
16 twelve names down the margin, including George Grode.<sup>15</sup> Included with the  
17 invitation is a copy of a photograph of two men, apparently Bruce Hironimus and  
18 Senator Santorum, as the photograph contains the handwritten "To Bruce" with an

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<sup>14</sup> The phone number is that of Megan Martin's employer, Greenlee Partners LLC, an outside consultant that provides contract lobbying services to Highmark.

<sup>15</sup> The list also contains the names [first name illegible] Rapp, perhaps Stanley Rapp, and William D. Greenlee, the founder of Greenlee Partners LLC. Mr. Greenlee's name also appears on the "Host Committee" list for the 2000 golf tournament. See Highmark page HM 0049.

1 illegible message and signed "Rick Santorum." See Highmark page HM 0067. The  
2 photograph is titled "Santorum 2002 – Hershey Golf Club May 17, 2002."

- 3 • 2003 Rapp reception: Solicitation titled "Santorum 2006 Kick-off Reception" taking  
4 place at the home of Stan and Gretchin Rapp. See Highmark page HM 0085. The  
5 solicitation asks for "\$1,000 per person" and "\$10,000 raised per Host," the latter of  
6 which are accorded a private reception. Two contacts are listed: Megan Martin at  
7 Greenlee Partners LLC and Nadine Maenza at Santorum 2006. The solicitation  
8 contains a disclaimer that it was paid for by Santorum 2006 and other information  
9 including that corporate contributions are not permitted.

10 This documentation regarding the fundraising portrays Bruce Hironimus and Megan Martin with  
11 substantial roles. Neither these documents nor the submission as a whole, however, describe the  
12 actual collecting and/or forwarding of contributions.

13 **3. Highmark officers' interview statements**

14 **a. Bruce Hironimus**

15 Highmark's submission contains Bruce Hironimus's explanation of the activity, in the  
16 form of counsel's memoranda of interviews of Mr. Hironimus. According to the submission, Mr.  
17 Hironimus got the idea that it was appropriate to use corporate funds to defray fundraiser  
18 expenses "from exposure to others (companies) who were doing the same thing." Hironimus  
19 Interview, November 18, 2003, ¶ 8.<sup>16</sup> Prior to the enactment of BCRA, "the use of corporate  
20 funds for soft money donations, directly or indirectly, for candidate activities was a 'grey area.'"

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<sup>16</sup> The interview memorandum does not identify these other companies.

1 *Id.* at ¶ 7. Subsequently, BCRA “clarified where soft money cannot be used.”<sup>17</sup> *Id.* His basis for  
2 this understanding came from what he had heard and observed in the political community in  
3 which he worked since 1987. *Id.* at ¶ 6. However, Mr. Hironimus also says that he had never  
4 read campaign finance law, never attended training on the subject and never sought the opinion  
5 of counsel until after Highmark’s investigation had begun. *Id.* In any event, according to Mr.  
6 Hironimus, the people that he worked for knew what he was doing and other Highmark officials  
7 never “threw up a red flag.” *Id.* at ¶¶ 8 and 27.

8 **b. Other Highmark officers**

9 The information shows that two of Bruce Hironimus’s supervisors approved his expense  
10 reports containing some of the costs of the fundraising events, some of which were explicitly  
11 described as relating to political fundraisers. *See supra.* George Grode, then-Executive Vice  
12 President for Corporate Affairs and Government Business, had an understanding, based on what  
13 he was told by Bruce Hironimus, that it is lawful for corporations to defray the expenses of  
14 fundraising events by paying the costs directly to vendors and that this was a common practice by  
15 other corporations. Memorandum of Interview of George Grode, December 10, 2003 and  
16 April 16, 2004, (“Grode Interview”) ¶¶ 28 and 32. Mr. Hironimus had repeatedly stated that he  
17 knew the rules regarding campaign finance and appeared to be knowledgeable and conversant  
18 with campaign finance issues. *Id.* at ¶ 33. Mr. Grode had not attended training on campaign  
19 finance rules but he believed that Mr. Hironimus had. *Id.* at ¶¶ 11 and 36. Although Mr. Grode  
20 in his interviews did not specifically recall approving of certain fundraising expenses, he believed

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<sup>17</sup> One of the fundraising events for which Mr. Hironimus used Highmark funds to defray the costs took place in June 2003, several months after BCRA’s effective date.

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1 he had done so because of his belief that it was lawful “and because of Senator Santorum’s  
2 considerable interest and effectiveness in dealing with healthcare issues affecting Highmark and  
3 its healthcare programs.” *Id.* at 29. Finally, Mr. Grode attended the golf tournament fundraisers  
4 for Senator Santorum that were chaired by Mr. Hironimus. *Id.* at ¶ 24. Mr. Grode and John  
5 Brouse, former President and CEO of Highmark, were asked to recruit other golfer-contributors,  
6 which Mr. Grode did, consistent with his being listed on the event “Host Committee.” *Id.*; see  
7 Highmark page HM 0049. Mr. Grode recalled that at the 2000 golf tournament he had a clear  
8 sense that Highmark might have donated the prizes given to participants. *Id.* at ¶ 25.

9 Bruce Hironimus’s other supervisor, David O’Brien, Highmark Executive Vice President  
10 for Government Services, also expected Mr. Hironimus to be knowledgeable about campaign  
11 finance laws and believed him to be the company expert and source of knowledge on the subject.  
12 Memorandum of Interview of David O’Brien, May 18, 2004, ¶ 7. Mr. O’Brien says that he  
13 questioned Bruce Hironimus on the subject of the purchase of wine on the latter’s expense report,  
14 *see supra*, and that Mr. Hironimus stated that most of the wine would be used for Highmark  
15 “PAC events” such as the June 30, 2003 Santorum reception.<sup>18</sup> *Id.* at ¶ 3. Mr. Hironimus’s  
16 “clear and unhesitating” response that the wine was to be contributed to the Santorum  
17 fundraising event and Mr. O’Brien’s lack of knowledge about campaign finance laws gave Mr.  
18 O’Brien no reason to further question the expense. *Id.* at ¶ 4. As noted above, Mr. O’Brien  
19 wrote a note describing how the wine was used. See Highmark page HM 0088.

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<sup>18</sup> Highmark’s submission does not otherwise describe the 2003 Santorum reception as a Highmark PAC event. The PAC contributed \$1,000 to Santorum 2006 on May 22, 2003, but the available information does not indicate whether it was related to the June 30, 2003 reception. As noted above, the submission does not indicate any corporate contributions directly related to the PAC. *See supra* footnote 12.

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1                   **4.       Actions taken by Highmark**

2                   Highmark says it has taken the following actions as a result of the investigation:

- 3                   •   fired Bruce Hironimus;
- 4                   •   trained its government affairs staff in campaign finance law;
- 5                   •   sent the new Highmark Vice President of Government Affairs and an Assistant
- 6                   General Counsel from the Highmark Law Department to an FEC seminar;
- 7                   •   tightened internal controls over expenditures; and
- 8                   •   brought the results of its investigation to the Commission's attention.

9                   Highmark Memorandum to the Commission ("Highmark Memorandum"), dated June 14, 2004,  
10                  at 19-20.

11                  **B.       Corporate Contributions**

12                  Highmark's submission shows that corporate funds were used by then-Vice President  
13                  Bruce Hironimus to defray the costs for fundraising events supporting Senator Rick Santorum.  
14                  Mr. Hironimus's activity is attributable to Highmark. A corporation can only act through its  
15                  directors, officers, and agents. *United States v. Wallach*, 935 F.2d 445, 462 (2d Cir. 1991);  
16                  1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Private Corporations* § 30  
17                  (Supp. 2004). Moreover, corporations may be held liable, both civilly and criminally, for the acts  
18                  of an employee within the scope of the employment and that benefit the corporate employer. *See*,  
19                  *e.g., Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1306 (7<sup>th</sup> Cir. 1987); 18B Am. Jur. 2d  
20                  *Corporations* §§ 1831, 1836 (2004). Highmark's submission indicates that Bruce Hironimus  
21                  intended to benefit Highmark through his use of corporate funds to defray fundraiser expenses.  
22                  See Memorandum of Interview of Michael A. Romano, Highmark Senior Vice President and

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1 Corporate Compliance Officer, November 14, 2003, ¶ 18. And although Highmark's submission  
2 assigns responsibility to Bruce Hironimus for the corporate payments, it does not argue that  
3 Highmark itself is absolved of responsibility. See Highmark Memorandum at 1. Rather,  
4 Highmark acknowledges that its payment of the fundraiser costs appears to be a violation of the  
5 Act. *Id.*

6 Thus, Highmark has made corporate contributions to Santorum 2000, Santorum 2006 and  
7 Sen. Santorum's leadership PAC, America's Foundation f/k/a Fight-PAC. See 2 U.S.C.  
8 § 441b(a). Accordingly, there is reason to believe that Highmark, Inc. violated 2 U.S.C.  
9 § 441b(a).

10 Although Highmark's submission focuses on the corporation's payments to defray the  
11 costs of Senator Santorum fundraising events, the available information brings up questions  
12 regarding the raising of contributions in connection with these events. If corporate resources  
13 were used in this effort, Highmark may be subject to a further basis for potential section 441b(a)  
14 liability. The prohibition against corporate contributions includes the facilitation of earmarked  
15 contributions by a corporation and its officers, directors, or agents. 11 C.F.R. § 114.2(f)(1).  
16 Examples of facilitation include directing subordinates to plan, organize, or carry out a  
17 fundraising project as part of their work responsibilities, using corporate resources and providing  
18 materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes  
19 or other similar items.<sup>19</sup> 11 C.F.R. § 114.2(f)(2)(ii). In addition, corporations are prohibited  
20 from acting as conduits for contributions earmarked to candidates or their authorized committees.

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<sup>19</sup> By contrast, corporate employees may make occasional, isolated or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election, although they must reimburse the corporation for increased overhead or operating costs. 11 C.F.R. § 114.9(a)(1)

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1 11 C.F.R. § 110.6(b)(2)(ii). Thus, a corporation collecting and forwarding earmarked  
2 contributions to a candidate would violate 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(f) and  
3 110.6(b)(2)(ii) by facilitating the making of contributions and by acting as a conduit.

4 As described above, Bruce Hironimus's solicitation letter for the 2002 golf tournament  
5 asks contributors to send their checks to Megan Martin, an employee at Greenlee Partners LLC  
6 ("Greenlee"), a consultant to Highmark. See Highmark page HM 0065. Ms. Martin is also  
7 identified as a contact person on the solicitation for the 2003 reception. See Highmark page HM  
8 0085. Further, Ms. Martin appears to have worked on the 2003 reception: the \$7,568.40 catering  
9 invoice is addressed to her at Greenlee. See Highmark pages HM 0090-91. Thus, the question is  
10 raised whether Highmark or Greenlee resources were used in connection with collecting and  
11 forwarding contributions and/or organizing fundraising events.<sup>20</sup>

12 **C. Federal Contractor Contributions**

13 Publicly available information indicates that Highmark is a government contractor, and as  
14 such is prohibited from making contributions. See 2 U.S.C. § 441c(a)(1). Accordingly, there is  
15 reason to believe that Highmark, Inc. has violated 2 U.S.C. § 441c(a)(1). See MURs 5029 (MSE  
16 Technology Applications), 4297 (Ortho Pharmaceutical) and 3672 (Chrysler Corporation;  
17 Deloitte & Touche).

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<sup>20</sup> Bruce Hironimus says that Greenlee has not contributed to Santorum fundraising events and charged the amounts back to Highmark. See Hironimus Interview, November 18, 2003, ¶ 32.

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: David O'Brien

MUR: 5645

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9 **I. INTRODUCTION**

10 This matter was generated by the Federal Election Commission ("Commission") pursuant  
11 to information ascertained in the normal course of carrying out its supervisory responsibilities.  
12 The available information indicates that Highmark, Inc. ("Highmark"), an insurance company  
13 based in Pittsburgh, Pennsylvania,<sup>1</sup> used corporate funds to defray costs of fundraising events for  
14 Senator Rick Santorum's authorized committees and his leadership PAC. The information  
15 indicates that this activity involved David O'Brien, Executive Vice President for Government  
16 Services at Highmark, and Bruce Hironimus, former Vice President for Government Affairs at  
17 Highmark. Mr. Hironimus used expense reports and check requests to authorize the use of  
18 corporate funds to pay the costs of the fundraising events. Mr. O'Brien approved one of these  
19 payments during 2003.

20 As more fully set forth below, it appears that David O'Brien consented to prohibited  
21 corporate contributions in violation of 2 U.S.C. § 441b(a).

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<sup>1</sup> Highmark is a non-profit corporation whose primary business is the provision of a variety of health insurance products throughout Pennsylvania. Highmark was created in 1996 by the consolidation of two Pennsylvania licensees of the Blue Cross and Blue Shield Association, Medical Service Association of Pennsylvania d/b/a Pennsylvania Blue Shield, and Veritus Inc. d/b/a Blue Cross of Western Pennsylvania. Highmark has a number of subsidiaries that sell a variety of insurance products nationally without using the Blue Cross Blue Shield brands. Highmark's website describes the company as one of the largest health insurers in the United States. See <https://www.highmark.com/hmk2/about/index.shtml>

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Highmark funds used to defray Santorum fundraiser costs**

3 The available information shows Bruce Hironimus's use of corporate funds to defray the  
4 costs of a fundraising event supporting Senator Rick Santorum during 2003:

Committee	Event	Date	Highmark funds spent <sup>2</sup>	Purpose
Santorum 2006	Reception at the home of Stan and Gretchin Rapp	6/30/03	\$7,938.81	Catering, wine

5  
6 The fundraising event supporting Senator Rick Santorum during 2003 was a reception  
7 held at the home of Stan and Gretchin Rapp in Hummelstown, Pennsylvania. Highmark funds  
8 were used to pay for the catering and for wine. Bruce Hironimus used a check request and an  
9 expense report to obtain reimbursement from Highmark for the Rapp reception costs. The check  
10 request, which covered \$7,568.40 in catering costs, describes its purpose as "Promotional  
11 Expense" and "Private Business."<sup>3</sup> The expense report, which covered \$370.41 in wine costs,  
12 describes its purpose as "legislative mtgs" and "beverage for dinner events" was approved by  
13 David O'Brien, Mr. Hironimus's supervisor at the time. Mr. O'Brien stated in a  
14 contemporaneous handwritten note that bottles of wine were "donated to Rick Santorum  
15  
16

<sup>2</sup> This figures is the sum of multiple corporate payments.

<sup>3</sup> The term "Promotional" indicates that the costs should be charged against Mr. Hironimus's budget's "Promotions" line item; "Private Business" indicates that the expense is not to be charged against Highmark's government programs.

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1 (Senator) for a fund raiser in Harrisburg on 6-30.”<sup>4</sup>

2 **B. Corporate Contributions**

3 The available information shows that corporate funds were used by then-Vice President  
4 Bruce Hironimus to defray the costs for fundraising events supporting Senator Rick Santorum.  
5 Thus, Highmark has made corporate contributions to Santorum 2006. *See* 2 U.S.C. § 441b(a).  
6 Mr. O'Brien may have violated section 441b(a) as a corporate officer consenting to a corporate  
7 contribution. Mr. O'Brien approved a Bruce Hironimus expense report containing an expense  
8 that constituted some of the corporate contributions and the available information indicates that  
9 Mr. O'Brien was aware that such expenses defrayed costs of a Santorum fundraising event.  
10 Therefore, there is reason to believe that David O'Brien violated 2 U.S.C. § 441b(a).

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<sup>4</sup> Mr. O'Brien's note also explains that a portion of the wine purchased by Mr. Hironimus was used for a different event. Mr. Hironimus's expense report included the cost of the entire purchase, \$449.79.

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